

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.07.2019
CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI
W.P.No.23108 of 2005

- 1.E.V.Joseph(Died)
- 2.Leela(wife)
- 3.Binoy.E.J(Son)
- 4.Biju(Son)

...Petitioners

P2 to P4 are substituted as Lrs
of the deceased P1 vide order dated
18/07/19.

vs

1. The Forest Settlement Officer
Gudalur, The Nilgiris
Tamil Nadu-643212
2. The District Forest Officer
Gudalur, The Nilgiris
Tamil Nadu-643212.
3. The District Court, Nilgiris
at Udhagamandalam
represented by the
Presiding Officer.

....Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari, to
call for the records on the file of the first respondent in
proceedings No.Rc.A.No.318/1983 dated 31.03.2004 so far it
relates to an area measuring 1 acre of land in Survey No.367/5
in Cheranode Village sought to be included in the proposed
forest block, as confirmed by the Judgement and Decreetal order
passed by the third respondent in C.M.A.No.23/2004 dated
04.01.2005 and quash the same.

For Petitioner : M/s.P.Pooja

For Respondents : Mr.G.B.Rajesh,
Government Advocate

O R D E R

The petitioners have filed this writ petition for issuance of a Writ of Certiorari, to call for the records on the file of the first respondent in proceedings No.Rc.A.No.318/1983 dated 31.03.2004 in so far as it relates to an area measuring 1 acre of land in Survey No.367/5 in Cheranode Village, sought to be included in the proposed forest block, as confirmed by the Judgement and Decreetal order passed by the third respondent in C.M.A.No.23/2004 dated 04.01.2005, and quash the same.

2. The case of the petitioners is that they have been a permanent resident of Ayyankolly in Cherangode Village, Pandalur Taluk for the last 46 years. They have been holding agricultural land to an extent of 3 acres in Ayyankolly and cultivating crops such as Tea, Pepper, Arecanut, Coffee, some seasonal crops like Plantain, Paddy, and Vegetable. There are number of families similarly situated and engaged in agriculture in the surrounding areas. While so, the Government of Tamil Nadu issued a notification under Section 4 of the Tamil Nadu Forest Act, 1882 published in the Government Gazette dated 03.09.1997 in Part II and its amendment which was published on 07.06.2000.

3. A Special Tahsildar was appointed under the said Act, as the Ex-Officio Forest Settlement Officer to enquire into and determine the existence, nature and extent of the right claimed by, or alleged to exist in favour of any person in or over any land comprised within such limits or to any forest produce of such land and to deal with the same as provided in the Tamil Nadu Forest Act 1882. Under the provisions of Section 6 of the Tamil Nadu Forest Act 1882, a proclamation was published in the Nilgiris District Gazette dated 01.03.1998, requiring every person claiming any rights referred to in Section 4 of the Act, either to present their representations to the Forest Settlement Officer or to appear before him within a period of 3 months and state the nature of such rights, and in either case to produce all documents in support thereof.

4. The petitioners have appeared before the Forest Settlement Officer, i.e., the first respondent herein and presented their claim along with supporting documents, including order of this Court in W.M.P.No.13346 of 1982 in W.P.No.8914 of 1982, Coffee Registration Certificate, House Tax Receipt, Voters Enumeration Card. An order was finally passed by the Forest Settlement Officer in the year 2004, viz., RC.A.No.318/1983 dated 31.03.2004. But the first respondent has passed an order dated 31.03.2004, allowing the petitioners' claim only in respect of two acres out of the three acres under the petitioner's occupation, against which, the petitioners have

filed an appeal before the District Judge of the Nilgiris, in C.M.A.No.23 of 2004 and the District Judge also confirmed the order of the Forest Settlement Officer. Challenging the said order, the present writ petition is filed.

5. The learned counsel for the petitioner would submit that the respondents have erred in failing to consider the documentary evidence submitted by the petitioner and also the fact that their own investigation discloses that the petitioner was in occupation and was cultivating three acres of land and that three acres of land is surrounded on all sides by agricultural land of other parties and not by forest land.

6. The learned counsel for the respondents would submit that during the settlement proceedings, enquiry was conducted by the Forest Settlement Officer, over the claims. The first respondent has also allowed his claim for 2.00 acres out of 3.00 acres vide order in Rc.A.318/83 dated 31.03.2004. Aggrieved by the said order, the petitioner has filed an appeal before the 3rd respondent herein in respect of the balance 1.00 acre and the same was dismissed. Hence the petitioner has chosen to file the present writ petition.

7. A perusal of the records clearly shows that the petitioners have submitted their claims along with the supporting documents including the Coffee Registration Certificate, House Tax Receipt, Voter's Enumeration Card and the order of this Court in W.M.P.13346 of 1982 in W.P.No.8914 of 1982.

8. The very same petitioner has filed a writ petition in W.P.Nos.4288 and 4299 of 1982, stating that the District Forest Officer will not evict the petitioners unless it is found that their possession is illegal. Even such an eviction cannot be done excepting having recourse to law. Thereafter, the petitioner has filed a writ petition before this Court in W.P.No.8914 of 1982 and this Court has also granted interim injunction. The statement made by the petitioners that they are in long possession and occupation of the lands is made on the basis of documents, including the order of this Court in W.M.P.No.13346 of 1982 in W.P.No.8914 of 1982, Coffee Registration Certificate, House Tax Receipt, Voters Enumeration Card.

9. It is well settled by this Court in very many judgments that an "encroacher" cannot become an "occupier" under the Tamil Nadu Forest Act, 1882. The District Judge has also confirmed the order of the Forest Settlement Officer, in rejecting the claim made by the petitioners. The petitioners are not entitled to get one acre land and the petitioners claim is dismissed as per the

order passed by the District Judge as well as the Forest Settlement Officer. Further, it is found that the same claim made by other encroachers, who are residing in the other adjacent lands, is also dismissed.

10. In view of the above lines, I do not find any infirmity or illegality in the order passed by the District Judge as well as the Forest Settlement Officer. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Forest Settlement Officer
Gudalur, The Nilgiris
Tamil Nadu-643212
2. The District Forest Officer
Gudalur, The Nilgiris
Tamil Nadu-643212.
3. The District Court, Nilgiris
at Udhagamandalam
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+1cc to Special Government Pleader(Forest) sr.63408

W.P.No.23108 of 2005

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nr 18/09/2019

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